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STATE FOR P, SCA/FO (DAS GASTRIGHT), SCA/A (SINGRAM), S/WCI
(MSTAMILIO, MSHIN, ARICCI), L/PM (JDOROSIN)
NSC FOR AHARRIMAN
OSD FOR MPORGES
CENTCOM FOR CG CJTF-82, POLAD, CSTC-A, SOUTHCOM, JTF-GTMO

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TAGS: [KAWC](#) [MARR](#) [PTER](#) [PGOV](#) [PINS](#) [PREL](#) [AF](#)

SUBJECT: DETAINEES: IROA PREPARES FOR FIRST TRIALS AT ANDF

REF: A. KABUL 02647

[1](#)B. KABUL 02373 (NOTAL)

[1](#)C. KABUL 02136

[1](#)D. KABUL 01779

[1](#)E. KABUL 01755

[1](#)F. KABUL 01577

[1](#)G. KABUL 01558

[1](#)H. KABUL 01220

[1](#)I. KABUL 00956

[1](#)J. KABUL 10191

Classified By: Political-Military Counselor Carol A. Rodley; reasons 1.
4(b) and (d).

[1](#)1. (S/NF) Summary: Following July and August transfers from the Bagram Theater Internment Facility (BTIF) and Guantanamo Bay (GTMO), more Afghans are in IROA custody in the Afghan National Detention Facility (ANDF) than remain at GTMO. Afghanistan's court system was reorganized in July, and the Supreme Court has now confirmed that the Chief Judge from the Second Central Primary Court and four others from its Public Security Division will hold detainee trials at the ANDF. The court will operate as a national security court, and classified evidence may be admitted. Remaining trial preparations are addressing space, defense attorney, and trial observer issues. The Attorney General's (AG) national security prosecutor has accepted charges for 55 of the first 56 detainees transferred to IROA. The National Directorate of Security (NDS) recommended release of one detainee, a Low Level Enemy Combatant BTIF's Enemy Combatant Review Board had recommended for PTS release. The interagency Detainee Review Board concurred and notified US representatives. NDS has begun investigating the 31 detainees transferred in July and August, noting that all GTMO evidentiary files are needed in Dari. NDS investigations and AG review of charges are keeping up with the pace of transfers; the capacity bottleneck is now the start of trials.

More Afghans Now in Afghan National Detention Facility Than Guantanamo Bay

[1](#)2. (S/REL TO IROA) Following resolution of a July 16 detainee

disturbance (reftel B), 26 detainees were transferred from the Bagram Theater Internment Facility (BTIF) to the Afghan National Detention Facility (ANDF) without incident on July 17. Beforehand, polmiloff alerted Mr. Zia Salehi, Situation Room Director in the Office of the National Security Council (ONSC) that a transfer would occur, and on July 18 she provided Salehi with a list of the transferees. Following the August 9 transfer of 5 Afghans from GTMO (reftel A), 87 Afghan detainees are in the ANDF. Since the July 17 transfer, more Afghans are in IROA custody in ANDF than remain at GTMO.

Prosecutions Ready; Trial Preparations Continue

13. (S/NF) Following notification in June (reftel C) that charges for the first 12 transferees to ANDF had been relayed to the Attorney General's (AG) Office and accepted, LTG Abdul Fateh, the head of AG National Security Special Prosecution and National Directorate of Security (NDS) investigator COL Moldafi met with CSTC-A's Chief of Operational Law (CoOL), a Department of Justice mentor to the AG, and polmiloff on July 19. Fateh advised us that although he had sent the 12 detainee cases to the appropriate court on June 26 and was ready to prosecute them as well as several other national security cases, an early July reorganization of the court system had left him with no venue for prosecution. Fateh welcomed our offer to ask the ONSC for clarification and advised that Chief Justice Azimi had promised to activate the new courts and give priority to the 12 detainee cases.

14. (S/NF) NDS Legal Adviser Zuhore-e Rasoli told CSTC-A's CoOL and polmiloff on 21 July that he was very concerned about the new court arrangement, had told Chief Justice Azimi that detainee evidence was classified, and thought Azimi was now "sorry" for what he had done. Rasoli observed that civilian judges would be influenced very easily if national security cases were brought before them and that he believed detainee cases should be heard before a special court allowed by the Constitution's Article 134 because "we are in a war." Rasoli advised the court reorganization had not yet been discussed with Parliament (which later reconvened at the end of July). Rasoli also emphasized the urgency of starting trials and said he had helped quell the July 16 detainee disturbance by sending word via ANDF Commander BG Safiullah to the disturbance ringleaders--the first 12 transferees--that their cases had been forwarded to the AG.

15. (S/NF) Chief Justice Azimi advised Rule of Law Coordinator and polmiloff on July 22, however, that the new court would indeed operate as a national security court and that evidence could therefore be closely held. Azimi cautioned us not to ask him to bring judges out to conduct trials at ANDF and said, having discussed the issue with President Karzai the previous week, he had decided to set up a new court in a building near the Supreme Court for detainee trials.

16. (S/NF) On July 29, following a governmental closure after King Zahir Shah's death, Supreme Court Justice and Detainee Review Board member Rashid chaired a meeting at ONSC's request with Chief Justice Azimi's Administrative Chief Dr. Kamawi, USAID mentor Dr. Mohammed Arif, Post's Rule of Law Coordinator, CSTC-A's CoOL, and polmiloff. Justice Rashid advised that the Afghan court system has been revised into four primary court "zones," each with six divisions (public security, criminal, civil, public rights, traffic, and registration, documents, and deeds). Rashid also clarified that NDS had met with Chief Justice Azimi and that detainee trials would now be held by the new Second Central Primary Court's Public Security Division. He confirmed that the court would be a "mobile" national security court convened at ANDF and that classified evidence could be admitted. Trials will not be open to the public, but observers may be able to attend. A summarized record of trial will be kept although Rashid cautioned that IROA has no court reporting capability. Rashid also advised that sharia law would not apply to detainee cases.

¶7. (S/NF) At a followup meeting on July 31 to address administrative issues, Kamawi and Arif gave an advance preview of Justice Rashid's planned August 1 briefing to the DRB. CSTC-A's CoOL and polmiloff briefed Kamawi and Arif on laws under which detainees have been most commonly charged. Kamawi and Arif clarified Justice Rashid's comments on sharia law by stating it may indeed be applied to detainee cases. They advised that while there is no attorney licensing provision, a foreign lawyer representing a detainee might obtain permission from the Supreme Court to practice in an Afghan court. They also advised that Judge Mohammed Tayeb, Chief Judge of the Second Central Primary Court, will preside over trials seconded by Judge Noor-u-Haq, Chief Judge of that Court's Public Security Division. Kamawi also provided the names of Hamed, Ahmad Noor, and Mohammed Zahir, the other three Public Security judges who will form the bench, as well as names of the court's administrator and three clerks. ANDF Commander BG Safiullah has invited representatives of this group to visit ANDF on August 15 and view several temporary options for the conduct of trials until CSTC-A has completed construction of a multi-purpose building with adequate space for a courtroom o/a November 1. Kamawi and Arif welcomed courtroom observers such as the US Embassy or the United Nations Assistance Mission in Afghanistan, which has the responsibility to monitor trials. We will raise the observer issue with the ONSC before trials start. Kamawi and Arif later provided the names of seven defense attorneys who Ibrahim Hassan, the International Legal Foundation--Afghanistan (ILF-A) director, has slated to represent detainees. ILF-A representatives have visited the ANDF, but attorneys have not yet been assigned to individual detainees. Kamawi and Arif advised that the Court will also designate five legal aid attorneys for detainees who cannot afford representation. To prepare for trials, Kamawi said cases needed to be allocated to judges, a place for trials prepared, prosecutors shown the trial venue, and defense attorneys assigned. Kamawi and Arif emphasized the need to take a low-key approach to preparations for detainee trials so as not to alarm judges about physical security issues. For example, court personnel will transport themselves to the ANDF.

Status of Charges, Relays of Evidence, Investigations

¶8. (S/NF) NDS Legal Adviser Rasoli advised CSTC-A's CoOL and polmiloff on July 21 and August 11 of charges NDS has relayed to the AG's LTG Fateh for the second and third groups of transferees. Charges for all 16 detainees in the third group were relayed to Fateh on July 31. Of the 28 detainees in the second transfer to ANDF on June 3, the BTIF Enemy Combatant Review Board (ECRB) had evaluated all but one (a High Threat Low Level Enemy Combatant (LLEC)) as Low Threat LLECs recommended for PTS release. IROA, however, plans to charge all but one of these detainees who BTIF had recommended for PTS release: Detainee Juma Gul (US9AF-002911DP) is a Low Threat LLEC captured in his home based solely on the information provided by one intelligence source. He denied all allegations against him and was found not to be deceptive during a BTIF polygraph exam. Fateh advised on August 1 that the AG has accepted charges for the remaining 27 of the 28 transferred on June 3. Four of the remaining 55 detainees from the first three transfers are charged under one Article; the remaining 51 are accused of multiple crimes under Articles 1, 5, 7, 9, 15, and 23 of the Law on Crimes Against Internal and External Security and Article 119 of the Penal Law. Eleven are charged under the security law's Article 1 (joining the enemy in anti-government activity), 22 under Article 5 (causing disruption or damage with explosives), one under Article 7 (anti-government propaganda), 33 under Article 9 (anti-government organizational activities), 30 under Article 15 (terrorism), 8 under Article 23 (illegal financial transactions), and 39 under Article 119 of the Penal Code (weapons possession). One detainee is also charged with murder under the Penal Code.

¶9. (S/NF) NDS' Rasoli advised on August 1 that investigations begun for the fourth, most recent group of 26 transferred on July 17. Because ONSC officials have been at the Afghan-Pakistan jirga since the August 9 transfer of five from GTMO (reftel A), ONSC's Salehi concurred with polmiloff's passing evidentiary files directly to Rasoli on August 11; three were in Dari and two in Pashto. While Rasoli can read the two Pashto files passed, he emphasized that trials are conducted in Dari and that all files should be translated into Dari. Another transfer of 24 detainees from the BTIF to ANDF is planned for August 16.

¶10. (S/NF) Following up on the informal exchanges that have been taking place since May with NDS's Rasoli, on July 18 Post passed ONSC's Deputy National Security Adviser Engineer Ibrahim a letter from the Acting DCM formally requesting copies of information on charges against detainees who have been transferred from US detention facilities to IROA custody and offering to work with the NDS legal adviser and AG's office to identify a methodology to assist both governments with tracking the progress of detainee cases through Afghan courts. Post is currently tracking the dates when detainees and evidence have been transferred to IROA, types of charges filed, and status of cases in an Excel spreadsheet and will share subsets of this information periodically with NDS, the AG prosecutor, and court personnel.

¶11. (S/NF) In order to identify detainees for further upcoming transfers, we relayed an invitation from CJTF-82 to IROA on July 8 for investigators to interview detainees who have arrived at the BTIF since the last IROA investigations were concluded there last summer. ONSC's Malik Quraishi advised on August 4 that responses from ministries designating investigators should be available shortly.

Detainee Review Board Meets, Concurs on One Release; Attendees

¶12. (S/SF) The Detainee Review Board (DRB) convened for its fifth regular session on August 1. US attendees noted that the DRB's request to house NDS investigators at the ANDF during the workweek due to security and workday efficiency concerns (reftel C) had been rapidly addressed when ANDF Commander BG Safiullah designated a section of the guard barracks for their use. AG Representative Shinwari stated that the US should have included an AG prosecutor when Ministry of Interior and NDS investigators accompanied CSTC-A's CoOL to GTMO in June (reftel C). CSTC-A's CoOL explained that the delegation was organized on short notice and required a small number of attendees. DRB members confirmed that the Afghan delegation membership on the GTMO trip was not an impediment to transfers of detainees from GTMO. ONSC's Salehi stated that he was awaiting the report from the Afghan members of the delegation; he reiterated to polmiloff on August 9 that he had still not received it.

¶13. (S/SF) Justice Rashid advised the DRB of the impetus for court system changes: First, the Supreme Court previously could only approve or reject lower court decisions; it will now be able to modify them. Second, the court system was formerly spread among 18 districts; it is now centralized into four zones (paragraph 6). Rashid reiterated Kamawi and Arif's July 31 briefing (paragraph 7) and advised the current caseload: 20 judges are handling 700 current cases, and nine judges are handling 6000 appellate cases. (Comment: By designating 5 judges to handle detainee cases, the Supreme Court is clearly according priority to these cases.) After discussion, the DRB came to consensus on not conducting detainee trials publicly but on publicizing the verdicts. The issue of observers was not discussed due to time constraints. Polmiloff observed that NDS investigations and AG review are keeping up with the pace of transfers but that the next step is to overcome a capacity bottleneck for the start of trials.

¶14. (S/SF) The DRB also asked US permission to release ANDF detainee Juma Gul (paragraph 8). US attendees hastened to

emphasize that Gul, like all ANDF detainees was in the exclusive custody and control of IROA. We advised our appreciation of their observing the previous DRB agreement to notify each other of releases (from ANDF, BTIF, and GTMO). It was clarified that BG Safiullah needed a letter from a senior ONSC official before physically releasing a detainee. ONSC's Salehi advised polmiloff on August 9 that although the letter had been prepared, ONSC was concerned about phone calls they had received regarding Juma Gul's release and wanted to conduct additional investigation before advising BG Safiullah to release him.

¶15. (S/REL TO IROA) August 1 DRB Attendees:

Director of Policy and Oversight, ONSC, Malik Quraishi
Director, Situation Room, ONSC, Mr. Zia Mohammed Salehi

Supreme Court Justice Rashid
Deputy Attorney General and Director for Appeals Shinwari
NDS Legal Advisor Rasoli
MOD Legal Advisor General Mohammed Yousef Nooristani
MOD Legal Affairs Department Mr. Abdul Qayoum Nezami
MOI Deputy Director of Intelligence General Jamaluddin
(Absent) MOJ General Director of Prisons General Abdulsalim Asmat

Also attended at ONSC's invitation:
ANDF Commander BG Safiullah
Head National Security Prosecutor, AG's office LTG Fateh

US Attendees:
CSTC-A Chief of Detainee Operations and Deputy Chief
CSTC-A's Chief of Operational Law
Polmiloffs
Embassy interpreter

Palace Requests for Releases Into PTS, Transfers

¶16. (S/Rel to IROA) In 2007, ONSC has requested PTS release of three detainees from Uruzgan and Kandahar (reftel C). At ONSC's request, the transfer date of Mangal Khan from Kandahar (US9AF-001284DP), was moved up to July 17. Without specifying its source, polmiloff advised NDS' Rasoli on July 21 that there had been "pressure" to release Mangal Khan, whose case IROA investigators had considered prosecutable; Rasoli confirmed on August 11 that the investigation into Khan's case is proceeding. NDS is now conducting a post-transfer investigation of his case. CJTF-82 now has denied the July 5 ONSC request (reftel C) for transfer of the two Uruzgan detainees Mohabullah (US9AF-002783DP) and Ghulam Rassoul (US9AF-002853) to ANDF, and this decision will be relayed to ONSC's DNSA Engineer Ibrahim via letter shortly.

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